



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

FILLMORE FIELD OFFICE

35 East 500 North
Fillmore, Utah 84631



In Reply Refer to:

3800

(U-010)

UTU-070667

December 31, 2003

CERTIFIED MAIL #7002 3150 0004 1699 4308
RETURN RECEIPT REQUESTED

DECISION

RUSSELL FELLER	:	
PRESIDENT	:	ADDITIONAL INFORMATION
FELLER HOLDING CORP	:	REQUIRED---
688 E CHADRANCH RD	:	43 CFR 3809.552(a)
VEYO UT 84782	:	SECOND NOTICE

Reclamation Cost Estimate Not Acceptable

On November 14, 2003 we sent you a decision requiring additional information regarding your reclamation cost estimate for Notice UTU-070667. You received the decision on November 15, 2003 and were asked to respond within 30 days of receipt. You did not respond within the time frame which ended December 15, 2003.

We are again enclosing our reclamation cost estimate for your operation. You have 30 days from the receipt of this decision to submit either written concurrence with the estimate or information that specifies why it should be revised. If you do not submit the information within 30 days, your notice will expire and we will issue an order requiring you to cease all mining activity and to begin reclamation. Reclamation must begin within 30 days and of receipt of the decision, and end at the earliest feasible time. You may submit a new notice or plan; however, since you extended your notice, you would no longer have the option of deferring reclamation as allowed by § 3809.300(d) and, according to § 3809.335, you must begin reclamation by the deadline regardless of whether or not you submit a new Notice or Plan, unless you can have acceptable financial guarantee in place by the deadline to end reclamation.

RECEIVED

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DIV OF OIL GAS & MINING

If you do submit the information and we still do not agree with it, we will issue a decision that allows you 60 days to submit a financial guarantee in the amount we calculate. If you do not submit the financial guarantee within that time frame, your notice will expire and you must promptly begin reclamation of the site.

We would also like to inform you that, in 1992, a common variety determination for the obsidian deposit similar to the one you are mining found the mineral to be a common variety. On October 24, 2003, new regulations went into effect that incorporated previous case law regarding locatable minerals. § 3830.12(b) states:

"Under the Surface Resources Act, certain varieties of mineral materials are locatable if they are uncommon because they possess a distinct and special value. As provided in *McClarty v. Secretary of the Interior*, 408 F.2d 907 (9th cir. 1969), we determine whether mineral materials have a distinct and special value by:

- (1) Comparing the mineral deposit in question with other deposits of such minerals generally;
- (2) Determining whether the mineral deposit in question has a unique physical property;
- (3) Determining whether the unique property gives the deposit a distinct and special value;
- (4) Determining whether, if the special value is for uses to which ordinary varieties of the mineral are put, the deposit has some distinct and special value for such use; and
- (5) Determining whether the distinct and special value is reflected by the higher price that the material commands in the market place."

We do not believe that the obsidian you are mining is a locatable mineral, and we may issue a contest your claims in accordance with § 3809.101(c). If the contest is upheld, you would be in trespass for removal of mineral materials without a proper permit. You can avoid contest and possible trespass action by entering into a sales agreement for the material. Since the 43 CR 3600 mineral material sales regulations have less stringent bonding requirements, the reclamation bond would probably be significantly smaller under a sales contract.

If you do not agree with this decision that your original reclamation cost estimate of \$1100.00 is not acceptable, you have the right to request review by the Utah State Director

(SD), of the Bureau of Land Management, in accordance with 43 CFR 3809.800. If you exercise this right, your request, accompanied by a brief written statement explaining why we should change our decision and any documents that support your written statement must be filed in writing within 30 days after you receive this decision. The envelope should be marked "State Director Review" and sent to the following address:

BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE
PO BOX 45155
SLC UT 84145-0155

You should include a telephone or fax number by which the SD can contact you. If the SD does not make a decision within 21 days on whether to accept your request for review, you should consider your request declined, and you may appeal this decision to the Office of Hearings and Appeals (OHA). You may also appeal to OHA if the SD's decision is adverse to you. You must file a notice of appeal to this office within 30 calendar days of the date you receive the SD's adverse decision or decision not to review.

You may also bypass State Director review, and appeal directly to OHA in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Fillmore Field Office within 30 days of receipt of this decision. You have the burden of showing that the decision appealed from is in error.

If you wish to file a petition to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals (Board), the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Board, and to the appropriate Office of the Solicitor (see 43 CFR 4.412) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent

regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As mandated in 43 CFR 3809.808, this decision will remain in full force and effect during review and appeal unless a written request for a stay is granted.

Lex Lowrey

Enclosures

Reclamation Cost Estimate
Form 1842-1

cc: Tom Munson, UDOGM (S/027/026)